

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DALE LESTER MORRIS,

Plaintiff,

v.

HEIDI WASHINGTON,
CARMAN MACINTIRE, and
SHERMAN CAMPBELL,

Case No. 20-13268

Honorable Nancy G. Edmunds

Defendants.

**OPINION AND ORDER ACCEPTING AND ADOPTING THE MAGISTRATE
JUDGE'S JULY 15, 2021 REPORT AND RECOMMENDATION [31]**

This is a pro se prisoner civil rights lawsuit filed under 42 U.S.C. § 1983 by Plaintiff Dale Lester Morris against Defendants, who are Michigan Department of Corrections employees, alleging a violation of his Eighth Amendment rights. The matter is before the Court on the Magistrate Judge's July 15, 2021 report and recommendation. (ECF No. 31.) The Magistrate Judge recommends granting Defendants' motion to dismiss (ECF No. 25) and denying Plaintiff's motions (ECF Nos. 22, 27, 28) as moot. Plaintiff has filed two objections to the report and recommendation. (ECF No. 32.) For the reasons stated below, the Court **OVERRULES** Plaintiff's objections and **ACCEPTS AND ADOPTS** the report and recommendation.

I. Standard of Review

Under Federal Rule of Civil Procedure 72(b)(3), "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive

further evidence; or return the matter to the magistrate judge with instructions.” See *also* 28 U.S.C. § 636(b)(1).

II. Analysis

The crux of both of Plaintiff’s objections is that the report and recommendation was issued in violation of the law, specifically 28 U.S.C. § 636(b). In his first objection, Plaintiff argues the Magistrate Judge exceeded her authority by recommending dismissal of this action. Plaintiff highlights the portion of § 636(b)(1)(A), which lists a motion to dismiss as one of several types of motions that may not be referred to a magistrate judge for hearing and determination. By making this argument, however, Plaintiff overlooks that § 636(b)(1)(B) allows a judge to designate a magistrate judge to submit findings of fact and recommendations for the disposition of such motions. That is precisely what took place here. The Court entered an order of referral to Magistrate Judge Patricia Morris, in part, for a report and recommendation on all dispositive matters pursuant to § 636(b)(1)(B). (See ECF No. 20.) In accord with that order, she then appropriately considered Defendants’ motion to dismiss and issued her report and recommendation. Thus, Plaintiff’s first objection is overruled.

Plaintiff’s next objection takes issue with the Magistrate Judge’s reliance on Federal Rule of Civil Procedure 12(b)(6) in her report and recommendation. Because Rule 12(b)(6) is the appropriate standard for a motion to dismiss, Plaintiff’s second objection is overruled.

Finally, to the extent Plaintiff’s objections may be construed as taking issue with the contents of the report and recommendation, the Court notes these objections “fail to identify the *specific* errors in the magistrate judge’s proposed recommendations, and such

objections undermine the purpose of the Federal Magistrate's Act, which serves to reduce duplicative work and conserve judicial resources." *Owens v. Comm'r of Soc. Sec.*, No. 1:12-CV-47, 2013 U.S. Dist. LEXIS 44411, at *8 (W.D. Mich. Mar. 28, 2013) (citations omitted). Nonetheless, the Court has reviewed the matter and agrees with the Magistrate Judge's recommendation to dismiss this action for failure to state a claim upon which relief may be granted.

III. Conclusion

For the foregoing reasons, the Court OVERRULES Plaintiff's objections and ACCEPTS AND ADOPTS the Magistrate Judge's report and recommendation (ECF No. 31). Accordingly, the Court GRANTS Defendants' motion to dismiss (ECF No. 25) and DENIES Plaintiff's motions (ECF Nos. 22, 27, 28) as moot.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: August 13, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 13, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager